STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: CITY OF NEW YORK DEPARTMENT OF JUVENILE JUSTICE Crossroads Juvenile Center, Horizon Juvenile Center, Bridges Juvenile Center, Petitioner, To Review Under Section 101 of the Labor Law: Notices of Violation and Orders to Comply issued October 19, 2007, - against - THE COMMISSIONER OF LABOR, Respondent, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, Intervenor.	DOCKET NO. PES 07-012 PES 07-013 PES 07-014 <u>RESOLUTION OF DECISION</u>

APPEARANCES

New York City Department of Juvenile Justice, Herman Dawson, Deputy Counsel for Legal Affairs and General Counsel; Alison Ferrara, Esq., Director of Occupational Safety & Health; Alan Deutsch, Senior Counsel, New York City Department of Citywide Administrative Services, for Petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Jeffrey Shapiro of Counsel, for Respondent.

Steven Sykes, Assistant General Counsel to District Counsel 37, AFSCME, AFL-CIO, for Intervenor.

WHEREAS:

On December 17, 2007, Petitioner City of New York Department of Juvenile Justice (Petitioner or DJJ) filed three Petitions contesting notices of violation issued by the Commissioner of Labor (Commissioner) to three of its juvenile detention facilities: Crossroads Juvenile Center, Horizon Juvenile Center and Bridges Juvenile Center.

On January 7, 2008 District Counsel 37, AFSCME, AFL-CIO (DC 37) filed an application to intervene in the proceedings. On February 6, 2008, the Department of Labor (DOL) filed Answers to the Petitions. On March 10, 2008, Petitioner filed Replies to the Answers. The application to intervene was granted, and the cases were consolidated pursuant to Interim Resolution of Decision dated March 26, 2008.

On March 25, 2008, Petitioner filed a Motion to Strike Material from the Answer. DOL filed an Affirmation in opposition and the Board denied the motion by letter dated May 13, 2008 which decision we hereby affirm.

The Commissioner cited Petitioner under the General Duty Clause of the Public Employee Safety and Health Act (PESHA) for failing to provide a workplace free from recognized hazards, particularly physical attack, which could lead to serious injury or death to its employees, to wit: "[e]mployees at New York City [Crossroads, Horizon and Bridges] Juvenile Center were exposed to serious physical injuries while caring for residents who have been known to be violent." The citation further stated that feasible and reasonable abatement methods for controlling the hazard would be compliance with certain listed requirements of the Workplace Violence Protection Act (WVPA) (Labor Law §27-b).

DJJ's Petition alleged that the citation was unreasonable and invalid since DJJ was improperly cited under the General Duty Clause when the more specific standard of the WVPA exists to cover the hazard and state and federal regulations and standards of construction favor specific legislation over the general. In its Answer, DOL denied the material allegations of the Petition and further stated that after inspection, Petitioner failed to produce required records which would demonstrate that it: (1) had performed a risk evaluation as required by Labor Law § 27-b(3); (2) had developed and implemented a written workplace violation protection program as required by Labor Law § 27-b(4); (3) made the written workplace violation protection program available to its employees and their representatives as required by Labor Law § 27-b(5)(a); and (4) "had provided information and training to employees on the risk of occupational assaults and homicides in their workplace, at the times of their initial assignment and annually thereafter, as required by Labor Law § 27-b(5)(b)."

At a case management conference in 2009, Petitioner requested that legal briefing be allowed on two subjects: (1) a recent court decision[1], which it alleged was dispositive of the case, and (2) whether Petitioner was properly cited under the General Duty Clause. In a letter dated April 21, 2009, the Board issued a preliminary determination that:

> "WVPA is not a specific standard as that term is used in OSHA and PESH[A] and therefore, does not invalidate the issuance of a violation pursuant to the General Duty Clause. Section 6(b) of OSHA provides a specific procedure for promulgation of OSHA standards, which provides for notice and comment rulemaking procedures. Likewise, OSHA requires that state plans adopt standards in a similar manner (*See* 29 CFR § 1902.4) and PESHA provides that 'the commissioner, in consultation with the state occupational safety and health hazard abatement board, shall

[1] The case at issue was *Walsh v. City of New York,* 2008 U.S. Dist. LEXIS 26526. Petitioner has since abandoned its argument pertaining to *Walsh.*

> promulgate rules and regulations recommended to him by such board which establish standards. . .' Therefore, it is the Board's preliminary determination that the existence of the WVPA does not bar the citation under the General Duty Clause. However, given the fact that neither party addressed this aspect of the issue, the Board will entertain additional briefing on this issue after the hearing is concluded."

Upon notice to the parties, a hearing was held on June 2, 2009 in New York City before Anne P. Stevason, Esq., Chairperson of the Board and the designated Hearing Officer in this proceeding. At the hearing the parties stipulated to various facts and exhibits and agreed to brief the legal issues. Post-hearing briefing was complete on October 7, 2009. Oral argument was then heard by the full Board on December 14, 2009.

STIPULATION OF FACTS

1. With respect to workplace violence, DJJ and DOL entered into a consultation period for the Bridges, Crossroads and Horizon facilities between June 7, 2006 and January 31, 2007.

2. During the course of DOL's inspections of the Bridges, Crossroads and Horizon facilities, the Public Employee Safety and Health Bureau ("PESH") Field Operations Manual, January, 2007 Revision, ("FOM") was at all times in effect.

3. At the time of the inspections of the Bridges, Crossroads and Horizon facilities in March 2007, DJJ did not provide documentation relating to the following provisions identified on the respective Notices of Violation:

    a) 27-b(3) – Perform a risk evaluation and determination. Determine the presence of factors or situations that might place employees at risk of occupational assaults and homicides;

    b) 27-b(4) – Describe in its program the methods the employer will use to prevent incidents of occupational assaults and homicides;

    c) 27-b(5)(a) – Make the workplace violence policy available to employees and their representatives;

    d) 27-b(5)(b) – Provide information and training to employees on the risk of occupational assaults and homicides in their workplaces, at the time of their initial assignment and annually thereafter.

4. On or about February 13, 2007, District Council 37 (DC 37) filed a complaint with PESH, alleging that DJJ employees at three facilities – Crossroads Juvenile Center, Horizon Juvenile Center, and Bridges Juvenile Center – were exposed to the hazard of workplace violence and specifically incidents of physical assault on staff by youths

residing at such facilities. DC 37 requested that PESH conduct an inspection with respect to alleged violations of the General Duty Clause (Section 27-a(3) of the Labor Law).

5. Inspections of Crossroads Juvenile Center, Horizon Juvenile Center, and Bridges Juveniles Center were initiated by Henrick Horton, PESH Senior Safety and Health Inspector, on or about March 26, March 27, and March 28, 2007, respectively.

6. At various dates in April and May, 2007, Inspector Horton visited Crossroads Juvenile Center, Horizon Juvenile Center, and Bridges Juvenile Center, interviewed staff members, obtained information, and observed training sessions regarding conflict resolution procedures and techniques used by staff to restrain resident youths.

7. Between September 17 and September 24, 2007, Inspector Horton conducted a series of inspection closing conferences, including a closing conference at which Petitioner was represented, during which the citations he planned on issuing were discussed.

8. Pursuant to its authority under Section 27-a(6) of the Labor Law, PESH issued Notices of Violation and Orders to Comply ("NoV"), each dated October 19, 2007, with respect to Crossroads Juvenile Center (Inspection Number 310405840), Horizon Juvenile Center (Inspection Number 310405857), and Bridges Juvenile Center (Inspection No. 310405832). These NoV's were received on October 24, 2007 by the City of New York Department of Citywide Administrative Services, Office of General Counsel, designated recipients of such notices for DJJ and all other Mayoral agencies of the City of New York.

9. The NoV's cited DJJ for two violations. Each NoV included the same two violations. The first citation listed on each NoV (Citation 1 Item 1) cited DJJ for a violation of the General Duty Clause, as follows:

> "Section 27-a(3)(a)(1): The employer did not furnish to each of its employees, employment, and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety, or health of its employees:
>
> "a) Employees at New York City [Crossroads Juvenile Center, Horizon Juvenile Center, Bridges Juvenile Center] were exposed to serious physical injuries while caring for residents who have been known to be violent. Feasible and reasonable abatement methods for controlling this hazard include, but are not limited to, meeting the following requirements of the Workplace Violence Act, New York State Labor Law Article 2, Section 27-b:
>
> 1) 27-b(3): Perform a risk evaluation and determination. Determine the presence of factors or situations that might place employees at risk of occupational assaults and homicides.

2) 27-b(4)(b): Describe in the program the methods the employer will use to prevent incidents of occupational assaults and homicides.

3) 27-b(5)(a): Make the workplace violence policy available to employees and their representatives.

4) 27-b(5)(b): Provide information and training to employees on the risk of occupational assaults and homicides in their workplaces, at the time of their initial assignment and annually thereafter.

10. The second citation listed on each NoV (Citation 2 Item 1) referred to violations of 12 NYCRR 801.40(a). The Petitioner corrected these violations on or before the issuances date of the NoV and does not challenge them.

11. An Investigation Narrative ("Narrative") dated September 24, 2007 and signed by Inspector Horton accompanied each of the three NoV's.

OCCUPATIONAL SAFETY AND HEALTH ACT

The federal Occupational Safety and Health Act of 1970 (OSHA) (29 U.S.C. §§ 651 *et seq.*) was enacted to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29 U.S.C. § 651[b]). An employer's duty under OSHA is generally of two types:

(1) A duty to comply with specific, published standards or regulations promulgated by the United States Department of Labor under 29 U.S.C. § 655; and

(2) A general duty to provide a workplace free of hazardous conditions not regulated by a specific standard, or regulation, but which are generally recognized as serious hazards in the employer's industry.

The second type of duty is better known as OSHA's General Duty Clause, at 29 U.S.C. § 654 (a)(1):

> "Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

The General Duty Clause resulted from extensive legislative compromise. Some in Congress believed the employer's only obligation should be to comply with specific standards, and others wanted to impose on employers a general requirement to provide a safe and healthful workplace. The compromise was to enact a "General Duty Clause" that protects workers from "recognized hazards" and that was meant to fill gaps that might exist in specific standards. (3-11 Occupational Safety and Health Act § 11.05 (Matthew Bender & Co., 2009).

> "The committee recognizes that precise standards to cover every conceivable situation will not always exist. This legislation would be seriously deficient if any employee were killed or seriously injured on the job simply because there was no specific standard applicable to a recognized hazard which could result in such a misfortune. Therefore, to cover such circumstances the committee has included a requirement to the effect that employers are to furnish employment and places of employment which are free from recognized hazards to the health and safety of their employees." (S. Rep. No. 1282, 91st Cong., 2d Sess. 9)

"An OSHA violation occurs whenever a condition exists that constitutes noncompliance with an OSHA standard or regulation, or OSHA's General Duty Clause, at a place of employment within the jurisdiction of OSHA that results in employee endangerment, provided the employer had actual or constructive knowledge of the condition or should have foreseen its existence" 3-11, *Occupational Safety and Health Act* § 11.05 (Matthew Bender & Co. 2009)

In general, an employer may not be cited under the General Duty Clause when the Secretary has adopted an occupational safety and health standard that addresses the subject matter of an alleged violation. "Any other interpretation . . . could lead to wholesale abandonment of the specific standards . . .to do so would provide little advance warning of what specifically is required in order that employers could maintain a safe and healthful workplace." *Secretary of Labor v Brisk Waterproofing Co.*, 1 OSH Case 1263, 1264 (1973). *See also Natl. Realty and Construction Co. v OSHRC,* 489 F.2d 1257 (1973); and *Sun Shipbuilding and Drydock Co.* (4 OSHAHRC 1020) Further support for this proposition are the regulations at 29 CFR 1910.5(c) (1) and 29 CFR 1910.5(f). These respectively provide that: "[i]f a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process;" and "[a]n employer who is in compliance with any standards in this part shall be deemed to be in compliance with the requirement of section 5(a)(1) of the Act [General Duty Clause], but only to the extent of the condition, practice, means, method, operation, or process covered by the standard."

Although in general a specific standard will preempt the General Duty Clause, the court in *United Auto Workers v Gen. Dynamics*, 815 F2d 1570 (DC Cir 1987) held that where an employer was aware that compliance with a specific standard was insufficient to protect employees from recognized hazards, the employer's compliance with the specific standard did not relieve it of its duty under the General Duty Clause to safeguard against recognized hazards.

A violation of the General Duty Clause is proved by showing: (1) that the employer failed to keep its workplace free of hazard; (2) the hazard is recognized; (3) the hazard is likely to cause death or serious physical harm; and (4) there is a reasonably adequate method to abate the hazard. (*Natl. Realty, supra.)* "A recognized hazard is a condition or practice in the workplace that is known to be hazardous either by the industry in general or by the employer in particular. . . . The Secretary can establish a 'recognized hazard' in several

ways... [including] state and local laws. . . ." (1-11, Employment Law Deskbook § 11.09[b][i] citing to *Cornell & Co., Inc.*, 1979 OSHRC LEXIS 268. Therefore, a hazard may be recognized by virtue of the passage of state and local laws, which may then be the basis for a citation under the General Duty Clause.

PROMULGATION OF SPECIFIC STANDARDS UNDER OSHA

When OSHA was originally enacted in 1970, it provided for the adoption, within two years, by rule, of "national consensus standards" as safety and health standards unless "promulgation of such standard would not result in improved safety and health." In addition, "[s]ection 6(b) of the OSH Act authorizes OSHA to issue new standards through notice and comment rulemaking procedures that are similar to those under . . . the Administrative Procedure Act (APA). However, in addition to the APA's requirement that the agency receive written comments from interested persons, the OSH Act requires OSHA to conduct a public hearing upon request." Rabinowitz, (ABA Section of Labor and Employment Law) Occupational Safety and Health Law at 368 (2nd ed 2003)

STATE PLANS

OSHA Section 18 permits states with federally approved plans to enforce state standards under authority of state law. A state may undertake enforcement of federal OSHA standards in connection with employees within its jurisdiction, or as in the case of New York, in connection with public sector employers within its jurisdiction. OSHA excludes government employees from its purview, but provides that states can submit a plan for the development of occupational safety and health standards for public employees (29 U.S.C. § 667 [b]) and in return will receive federal funding. A state's plan will be approved if it "contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupation safety and health program applicable to all employees of public agencies of the State and its political subdivisions" (29 U.S.C. § 667 [c] [6]).

In particular, a State Plan must provide for the development of state standards "at least as effective" as corresponding federal standards in providing safe and healthful employment and places of employment. There are "indices of effectiveness" that the Secretary of Labor must use to evaluate State Plans (29 USC § 1904.2), including whether the State Plan:

> "(iii) provides a procedure for the development and promulgation of standards which allows for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards producing organizations and the public an opportunity to submit information requesting the development or

> promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings."

THE PESH STATUTORY SCHEME

Pursuant to this federal mandate, New York enacted the Public Employee Safety and Health Act (PESHA) (Labor Law § 27-a). *See Goldstein v New York State Indus. Bd. of Appeals*, 292 AD2d 706 (3d Dept 2002). New York also developed a State Plan which the federal government approved and then certified. *See* 29 CFR §§ 1956.50 *et seq.*

DOL has adopted all federal safety and health OSHA standards by regulation at 12 NYCRR § 800.3 as PESHA requires (Labor Law § 27-a[4]). Pursuant to its State Plan and federal regulations (29 CFR § 1956.51 [j]) DOL has also adopted and publishes a Field Operations Manual (FOM) for its PESH program, which sets forth DOL's policies and procedures regarding the conduct of inspections, the issuance of violations and other PESH activities.

Every employer has the duty to comply with the safety and health standards promulgated under PESHA (Labor Law § 27-a [3]). PESH enforcement procedures are detailed in Labor Law § 27-a (6) and provide that "[i]f the commissioner determines that an employer has violated a provision of this section, or a safety or health standard or regulation promulgated under this section, he or she shall with reasonable promptness issue to the employer an order to comply which shall describe particularly the nature of the violation including a reference to the provisions of this section, standard, regulation or order alleged to have been violated . . . ."

PROMULGATION OF STANDARDS IN NEW YORK

Labor Law § 27-a (3) provides:

> "3. Duties. a. Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees; and (2) comply with the safety and health standards promulgated under this section."

Labor Law § 27-a (4) provides:

> "4. Safety and health standards. a. The commissioner shall by rule adopt all safety and health standards promulgated under the United States Occupational Safety and Health Act of 1970. . .which are in effect on the effective date of this section, in order to provide reasonable and adequate protection to the lives, safety and health of public employees and shall promulgate and repeal such rules

> and regulation as may be necessary to conform to the standards established pursuant to such act or pursuant to paragraph b of this subdivision.
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> "b. Notwithstanding the provisions of paragraph a of this subdivision, the commissioner, in consultation with the state occupational safety and health hazard abatement board, shall promulgate rules and regulations recommended to him by such board which establish standards whenever such board finds (i) that no federal standards exists for the particular condition being addressed and that such a standard is necessary for the protection of the public employees at risk, or (ii) a federal standard exists, but conditions in public workplaces in this state require a different standard, and such state standard will be at least as effective in providing safe and healthful places of employment as the federal standard."

The initial federal approval for the development of the New York State Plan was on June 1, 1984 and certification of the plan took place on August 16, 2006. In approving the Plan, 29 CFR § 1956.50 (b) described the state's procedure for adopting standards:

> "*(b) Standards.* The New York plan, as of revisions dated April 28, 2006, provides for the adoption of all Federal OSHA standards promulgated as of that date, and for the incorporation of any subsequent revisions or addition, thereto in a timely manner . . . The procedure for adoption of Federal OSHA standards calls for the publication of the Commissioner of Labor's intent to adopt a standards in the New York State Register 45 days prior to such adoption. . . The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the Commissioner of Labor will develop an alternative standard to protect the safety and health of public employees in consultation with the Hazard Abatement Board, or on his/her own initiative. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards."

At 29 CFR § 1956.52 it was determined that New York had completed the developmental steps required by OSHA and provided at 29 CFR § 1956.52 (i): "In accordance with 29 CFR 1956.51(i), the State revised its plan to reflects its procedures for the adoption of State standards identical to OSHA safety and health standards." As stated above, OSHA standards are promulgated through notice and rulemaking procedures.

Therefore, as required by Labor Law § 27-a (4) (b) and approved by OSHA at 29 CFR § 1956.50 (b), there is a specific method for promulgating new standards to be enforced under PESH. As in the federal arena, a state standard is to be promulgated through rulemaking so there is an opportunity to consider expert advice, consult with the Hazard Abatement Board and allow interested persons to participate in a hearing.

WORKPLACE VIOLENCE PROTECTION ACT IS NOT A SPECIFIC STANDARD FOR PURPOSES OF PESH OR OSHA

The Workplace Violence Protection Act (WVPA) (Labor Law § 27-b) was enacted in 2006 "to insure that the risk of workplace assaults are evaluated and that [public] employers design and implement workplace violence protection programs to protect and minimize the hazard of workplace violence" (Labor Law § 27-b[1]). At Labor Law § 27-b (6)(f), WVPA provides that: "Within one hundred twenty days of the effective date of this paragraph the commissioner shall adopt rules and regulations implementing the provisions of this section." WVPA became effective March 4, 2007 and proposed implementing "regulations were originally published in the State Register on September 19, 2007. Upon expiration of the first proposed rules, the Department submitted a second set of rules which incorporated a number of changes recommended during the comment period of the prior rulemaking" (NY Reg, November 26, 2008, at 8). Final WVPA regulations became effective on April 29, 2009 and are found at 12 NYCRR 800.6. Affected employers were required to be in compliance by August 28, 2009. The regulations were adopted in accordance with the provisions of Labor Law § 27-a (4) (b) in adopting standards and provide that "[t]he current PESH administrative plan will be used for the enforcement of this section, including a general schedule of inspections, which provides a rational administrative basis for such inspection" (12 NYCRR 800.6 [j] [5]). Notice of Proposed Rulemaking and notice of a scheduled hearing was published in the New York State Register of November 26, 2008 along with a summary of comments received on the prior regulation, a hearing date, a regulatory flexibility analysis which included compliance costs and a rural area flexibility analysis. It further commented:

> "Under Article 2, Section 27-a, the Commissioner may promulgate rules when there is a recommendation of action by the Occupational Safety and Health Hazard Abatement Board (the 'Board'). The Board made such a recommendation regarding workplace violence in November 2007."
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> "In September, 2007, the Department of Labor (the Department) proposed regulations to implement the provisions of Section 27-a of the Labor Law. During the course of this rulemaking, the Department received public comment and held public hearings on the rules. Upon the expiration of this proposed rule, the Department submitted the instant rule which incorporates a number of changes recommended during the comment period of the prior rulemaking."
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> "Section 27-b of the Labor Law requires public employers to implement programs to minimize the hazard of workplace

> violence. The proposed rule will clarify the methods employers must utilize to meet the intent of the law" (NYS Reg, November 26, 2008, at 9).

Although the WVPA became effective in 2007 and was in place when the Petitioner was cited on October 19, 2007, it was not promulgated according to the specifications required under OSHA and PESHA. Absent promulgation as a "specific standard" as defined by Labor Law § 27-a (4)(b), WVPA could not be cited as such under PESHA. DOL correctly cited DJJ for violating the General Duty Clause. There were no specific standards in place at the time of the citation. It is not until the implementing regulations are promulgated and filed with the Department of State that an employer may be cited under them. *See NYS Coalition of Pub. Empls. v Dept of Labor*, 89 AD2d 283 (1982) affd 60 NY2d 789 (1983) (OSHA standards adopted pursuant to Labor Law § 27-a[4][a] not effective until filed with the Department of State).

STATUTORY CONSTRUCTION

Petitioner argues that under rules of statutory construction, the WVPA takes precedence over the General Duty Clause and cites to Statutes § 397, which provides in part that a "prior general statute yields to a later specific or special statute." However, §397 also contains the proposition:

> "The repeal of a general statute by a special act is not to be assumed. The supersedure of general laws by special acts is also limited to cases where the two are inconsistent and the general rule that repeals by implication are not favored is to be applied. That is to say that both statutes will be given effect when they can stand together."

Petitioner cites to the cases of *Forest Hills Gardens Corp. v Kamp*, 165 Misc2d 915 (Civil Ct, Queens County 1995) and *People v Doe*, 117 Misc2d 35 (Sup Ct, Eric County,1982) in support of its argument. In *Forest Hills*, the issue was the proper procedure for objecting to discovery demands. Plaintiff moved for a protective order when he should have responded and objected. The two sections were inconsistent on the proper procedure required. In *People v Doe* the issue was whether a court order was necessary for a grand jury subpoena for court files on matrimonial documents. The court found that the specific statute requiring a court order to get documents superseded the grand jury's general authority to issue subpoenas. These cases are inapposite because each analyzes which of two inconsistent statutes should be given effect.

The instant matter does not involve inconsistent provisions of law and does not require resort to principles of statutory construction as Petitioner urges. Labor Law § 27-a and § 27-b are not inconsistent. The General Duty Clause is a broad safety and health standard that applies to all recognized hazards in public employment and is used, for the most part, when there is not a specific standard, which has been promulgated under the procedures of § 27-a. Section 27-b is a general requirement for all public employers, with a few exceptions, to conduct activities to prevent workplace violence, recognizes that workplace violence is a hazard and provides methods to reduce and/or prevent it. The statutes are not in conflict. In

fact, PESH cites to WVPA sections in suggesting reasonable abatement of the general duty violation.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Notices of Violation and Orders to Comply are hereby affirmed; and

2. The Petitions are denied.

Anne P. Stevason, Chairman

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 21, 2010.